

REMARKS

Claims 2 and 8-12 are pending in the present application.

In the office action mailed November 13, 2006 (the "Office Action"), the Examiner rejected claim 9 under 35 U.S.C. 112, second paragraph. The Examiner rejected claim 2 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication no. 2001/0049619 to Powell et al. (the "Powell reference") in view of U.S. Patent No. 4,831,552 to Scully et al. (the "Scully patent"). The Examiner further rejected claims 8-10 under 35 U.S.C. 103(a) as being anticipated by International Publication No. WO 00/68856 to Webvan Group, Inc. (the "Webvan reference") in view of the Scully patent. Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Webvan reference in view of the Scully patent and further in view of Nanry, Solving the Pickup and Delivery Problem with Time Windows Using Reactive Tabu Search Transportation Research, Part B, Vol. 34, 2000 (the "Nanry reference").

With respect to the Examiner's rejection of claim 9 under 35 U.S.C. 112, second paragraph, claim 8 has been amended to introduce reference to a "shift," thereby providing the antecedent basis for "the shift" recited in claim 9.

As previously mentioned, the Examiner rejected claim 2 under 35 U.S.C. 103(a) as being unpatentable over the Powell reference in view of the Scully patent.

The combined teachings of the Powell reference and the Scully patent fail to teach or suggest the combination of limitations recited by claim 2. The Powell reference fails to describe at least the schedulable time blocks as recited in claims 2 and 8. As argued by the Examiner, the Powell reference at paragraphs 16, 17, 34, 45, and 55 describe schedulable time blocks having a free time block. See page 4 of the Office Action. The cited material of the Powell reference describes the desirability of being able to offer to a customer requesting service fairly specific time windows for the service to be performed (para. 34) and that the invention provides possible appointment time windows in which a service order can be inserted based on a cost analysis (paras. 16, 17, and 45). The cited material further describes that appointment time windows can be determined for multiple days following the day on which the customer makes a

service request, thereby providing several different time windows from which the customer can choose (para. 55).

Generally, the material cited by the Examiner describes that the invention can determine several appointment time windows to offer to a customer for scheduling a service request. Although the feature of providing time windows from which a customer can choose to schedule a service request is described, there is no discussion of *how* the appointment time windows are determined. The Examiner has merely cited material that describes an end result (i.e., determining appointment time windows to be offered to the customer) and argues that because the result described in the Powell reference is the same as described in the present application, the Powell reference discloses the limitations recited in claim 2. However, this ignores that claim 2 includes particular limitations for finding openings in a schedule to be offered to a customer, which is more than just simply finding openings to be offered. More specifically, the material cited by the Examiner does not describe that generating a list of schedulable time blocks where each of the schedulable time blocks may include a free time block is part of the process of finding appointment time windows.

The Examiner further cites the Scully patent as teaching a virtual free time block as recited in claim 2. See page 5 of the Office Action. The Examiner argues that the use of event priorities to enable a manager to pre-empt a conflicting scheduled event for a more important (i.e., higher priority) event is analogous to the virtual free time blocks recited in claim 2. The priority preemption feature described in the Scully patent, however, is not the same as a “virtual free time block,” and is actually quite different. In particular, the priority preemption feature does not describe “bumping” or shifting conflicting scheduled events, rather, the result is that lower priority events are merely ignored. See col. 23, lines 45-60. In contrast, a virtual free time block, as acknowledged by the Examiner (see page 5 of the Office Action), is “an amount of time that could be used to fit an order by bumping one or more contiguous orders within a shift.” See page 6, lines 1-2. Whereas the priority preemption feature described in the Scully patent simply ignores any lower priority scheduled event, the use of virtual free time blocks acknowledges a scheduled order, and further attempts to shift the order to create a free time block that can fit an unscheduled order.

Moreover, even if we assume the Examiner's characterization of the Powell reference is accurate, and it is modified by the teachings of the Scully patent, the resulting scheduling system would be unfit for its intended purpose. The Powell reference suggests that the invention fulfills a need for a scheduling solution that enables a user to optimize the allocation of a workforce in response to changing service requests and priorities *while meeting prior customer commitments*. See para. 9 of the Powell reference (emphasis added). Taking the priority preemption feature of the Scully patent and modifying the teachings of the Powell reference would result in a scheduling system that ignores lower priority conflicting scheduled events when scheduling a new service request. The result would be prior customer commitments of lower priority being dropped from the schedule. It is unlikely that it would be acceptable to a user, and especially to a customer, to have a scheduling system that preempts already scheduled service requests in favor of a higher priority event without any other consideration.

For the foregoing reasons, claim 2 is patentable over the Powell reference in view of the Scully patent. Therefore, the rejection of claim 2 under 35 U.S.C. 103(a) should be withdrawn.

As previously mentioned, the Examiner also rejected claims 8-10 under 35 U.S.C. 103(a) as being unpatentable over the Webvan reference in view of the Scully patent.

The Examiner argues that the Webvan reference teaches generating a list of schedulable time blocks when there is no overlap between an appointment window specified by the customer and a list of openings, each of the schedulable time blocks having a free time block defining a range of time having openings in which the order can be scheduled. See page 8 of the Office Action. The material cited by the Examiner in the Webvan reference describes various considerations that are made when a customer selects an item to be delivered, for example, whether the item is in stock, whether the delivery vehicle has capacity to carry the requested item, whether the customer's preferred delivery time can be satisfied based on the resources available. As with the Powell reference previously discussed, however, the Examiner cites to material in the Webvan reference that describes nothing more than a generic result of a scheduling problem, that is, determining whether a customer's requested time of delivery can be scheduled. However, as previously discussed, this does not teach limitations of a claim that are

directed to particular steps of finding an appropriate appointment window. In the case of claim 8, the material cited from the Webvan reference does not teach generating a list of schedulable time blocks if there is no overlap between an appointment window and a list of openings, where each of the schedulable time blocks may have a free time block.

Additionally, the Examiner relies on the Scully patent for teaching a virtual free time block, as recited in claim 8. See page 9 of the Office Action. As previously discussed with reference to the rejection of claim 2, the priority preemption feature described in the Scully patent is not analogous to the virtual free time block recited in the claims. Moreover, even if the Webvan reference were to be modified by the teachings of the Scully patent, the same inoperable result described with respect to the Powell reference would occur for the Webvan reference. More specifically, it is unlikely that a scheduling system that fits a customer request into a schedule by ignoring an already scheduled customer request is desirable. Consequently, there would be no reason to combine the teachings of the Webvan reference and the Scully patent.

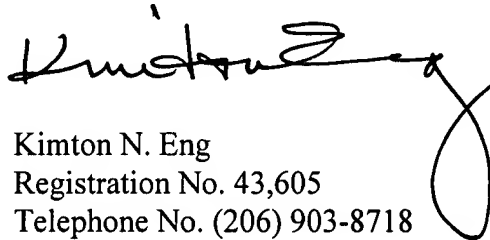
For the foregoing reasons, claim 8 is patentable over the Webvan reference in light of the Scully patent. Claims 9 and 10, which depend from 8, are similarly patentable based on their dependency from allowable claim 8. Therefore, the rejection of claims 8-10 under 35 U.S.C. 103(a) should be withdrawn.

Claims 11 and 12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Webvan reference in view of the Scully patent, and further in view of the Nanry reference.

The Examiner has cited the Nanry reference as teaching well known techniques of defragmenting a set of time blocks. See page 12 of the Office Action. Even if it is assumed for the sake of argument that the Examiner's characterization of the Nanry reference is accurate, and that one ordinarily skilled in the art would be motivated to modify the teachings of the Webvan reference as described by the Examiner, the Nanry reference fails to make up for the deficiencies of the Webvan reference and the Scully patent as previously discussed.

All of the pending in the present application are in condition for allowance.  
Favorable consideration and a Notice of Allowance are earnestly solicited.

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